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THE TRIAL OF LAMBDIN P. MILLIGAN

BY

HARRY J. SIEVERS

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FOREWORD

Lambdin P. Milligan, Huntington attorney, was a political storm-center in northern Indiana both during the Civil War and later. He was said to be a frequent visitor to Fort Wayne. Tradition credits him with at least one inflammatory speech here during the Civil War. His trials involved the legal services of several foremost Indiana politicians and lawyers inclusive of General Alvin P. Hovey and Benjamin Harrison and former Senator Thomas A. Hendricks and former Representative in Congress Joseph G. McDonald.

The brief account herein of the celebrated Milligan case later to be known as a landmark in American Constitutional law is copied verbatim from Harry J. Sievers, Benjamin Harrison. Hoosier Statesman volume II pp. 35-45. Father Sievers, author of the work and the Arthur Jordan Foundation owners of the copyright have kindly consented to the publication of this excerpt by the Public Library of Fort Wayne and Allen County. To author and to the copyright owner we express our gratitude for their willingness to make this study available to the membership of our society.

Father Sievers is well-known to our clientele because of the publication of "The Harrison Horror" a few years ago by the Public Library of Fort Wayne and Allen County.

Rex M. Potterf

HARRY J. SIEVERS, S. J.

Born in Brooklyn, N.Y., in 1920, Harry Joseph Sievers received his secondary education at Regis High School, New York City. After entering the Society of Jesus in 1939, he attended Fordham University, West Baden College in Indiana, and Loyola University, Chicago, where he received the A.B. in 1945 and the A.M. in American history in 1947. In 1950 Georgetown University, Washington, D.C., conferred upon him the Ph. D.

While enrolled in the Department of History of Georgetown University Graduate School, Father Sievers became interested in the career of Benjamin Harrison, Indiana's only claim to the Presidency. Shortly the Arthur Jordan Foundation, restorers of the Harrison Memorial Home in Indianapolis, commissioned him to write the definitive biography of President Harrison in three volumes. After exhaustive research in various archives, Father Sievers published Benjamin Harrison: Hoosier Warrior in 1952. This study of Harrison's early days and his career as a Civil War general was listed by the Chicago Tribune as one of the ten best books of the year. A second and revised edition was issued in 1960. In 1959 appeared Benjamin Harrison: Hoosier Statesman. This volume took Harrison from the Civil War to the White House, and highlighted the General's legal and political achievements in Indiana. "The Milligan Case, "treated in this book, was one of Harrison's major courtroom triumphs.

Since 1955 Father Sievers has headed the Department of History at Bellarmine College, a Jesuit Seminary in Plattsburgh, N.Y. Presently he is in Washington, D.C. completing the third and final volume of the Harrison biography. Publication is planned for late fall of 1964 when a boxed edition of the trilogy will be available.

In 1953, the year Father Sievers was ordained a Jesuit priest at St. Patrick's Cathedral in New York, he was also named "Brooklyn Personality of the Week" for distinguished service in the field of literature. Likewise in 1953 Indiana University honored him as "Author of the Year." As a life member of Phi Alpha

Theta, the Gold Key Society, the American, Mississippi Valley, Catholic and Indiana Historical Societies, he has written several articles, lectured widely, and has made Indiana and American history better known through radio and television appearances.

Six-foot-four, light-complexioned, blue-eyed, Irish-born Lambdin P. Milligan was a northern Indiana lawyer, onetime president of the Chicago and Atlantic (now Erie) Railroad, a scientific farmer, and promoter, who kept a stable of fine race horses. He had read law in Ohio with Secretary of War Stanton and soon became a close student of the teachings of Jefferson and Jackson. The latter he knew personally and admired greatly. Milligan was a vigorous Catholic by faith, and in politics always a Democrat. Twenty-one years Harrison's senior, the two had met while riding the legal circuits and stumping their adopted states for opposing parties. When war came, the two men walked different roads. After Harrison had enlisted and gone to the front, Milligan still opposed the war with great energy. He advocated "a Union restored by negotiation rather than war and denounced military arrests, conscriptions, emancipation, and other war measures." Newspaper stories, avidly devoured in camp, kept Harrison aware of Milligan's activities until he returned to Indianapolis on furlough in the fall of 1864. Then began a conflict which lasted seven years and profoundly influenced the lives of both men. The story, with its background and finale, is worth recounting, for both the issues and the personalities have left their stamp on American constitutional and political history.

Most publicized of the Indiana societies suspected of aiding and abetting the South during the war was the Knights of the Golden Circle, founded on Independence Day, 1854, at Lexington, Kentucky. In reality, two younger groups, the Order of American Knights and the Order of the Sons of Liberty, made the greatest impact on Indiana in 1863, 1864, and after the war. The Hoosier Council of the American Knights was organized at Terre Haute in August, 1863, temporary officers were installed the following month at Indianapolis, and by February, 1864, some sixty counties were reported organized. The old Knights of the Golden Circle furnished the nucleus of the new group, whose password was "Nu-oh-lac," Calhoun spelled backwards. Their purpose was to achieve "the independence of the individual states as secured by the

Revolution of 1776." Their leaders, boasting of more than 12,000 followers, opposed the liberation of four million blacks and declared that Lincoln's national government and Morton's state government were usurpations under which the people could not remain passive. Before long, the American Knights became the Sons of Liberty, adopting the initials "S.L." and the expression "Give me liberty or give me death." Indiana was divided into four districts, and in command of one was Lambdin P. Milligan, who had just failed in his quest for the Democratic gubernatorial candidacy.

When the Sons of Liberty began to operate in Indiana, bitterness between Union men and the "peace-at-any-price" opponents of the administration grew intense. Unionists organized the Loyal League, a secret military organization composed chiefly of members of the Republican party, for action against "all enemies at home and abroad." Robbing, stealing, and general outlawry became so prevalent in southern Indiana that men went armed, "slept with rifles under their pillows, barricaded their houses and places of business, and in a number of cases good citizens rose in their might and without judge or jury put to death many of the outlaws." It is only fair to point out that the overzealous spirit of the Loyal League led to abuses. Partisan Republicans blamed the Sons of Liberty, whom they identified with the Democratic party, for resistance to the draft, raiding bands of outlaws, and for drunken riots between "butternuts" and soldiers home on furlough. Federal, state, and local authorities, in quelling disturbances, frequently inflicted upon Democrats, just because they were Democrats, "abuses and punishments which were undeserved."

After the Democratic national convention, held in Chicago in late August, 1864, the victory of pro-Union War Democrats cleared the air somewhat of treason talk. Peace Democrats, and particularly the Sons of Liberty, felt less secure and less united. The latter certainly could not count on the full sympathy of the Democratic party. Harrison H. Dodd and William H. Harrison, Grand Commander and Grand Secretary, respectively, for the state, quickly grasped this fact.

When Dodd returned to Indianapolis after the convention, he immediately declared that the charges of conspiracy made against the Sons of Liberty were without foundation. He urged his fellow citizens to withhold judgment until such charges were substantiated. State Republican leaders, anxious for potent campaign material, remained belligerent and suspicious. Finally, Dodd issued a public statement that "the immediate purpose of the Sons of Liberty and the Democratic party were identical."

Republican reaction to Dodd's statement was swift, and when rumor whispered that the Sons of Liberty were planning an armed uprising in Indianapolis itself, action followed. The military, whose spies and detectives had long been active, moved rapidly. General Alvin P. Hovey, military commandant, arrested Dodd early in September. Within thirty days a number of arrests followed, including Indiana's four "major generals" of the Sons of Liberty, Bowles, Horsey, Humphreys, and Milligan.

Meanwhile, with Atlanta in Union hands, Harrison's thoughts turned to home and to his impending campaign for re-election as Supreme Court Reporter, an office from which he had been ousted, he believed, by Copperhead intrigue in November, 1862. Arriving in Indianapolis on furlough, on September 20, 1864, Harrison was quickly briefed on the state's explosive political situation. The Democrats, incensed by the "sensational and effective exposé of the Sons of Liberty or Knights of the Golden Circle," were prosecuting a bitter state campaign, hotly denying Republican allegations of treason. The battle in the hustings paralleled the fight in the press. Harrison had long held the fixed, partisan belief that most Indiana Democrats were guilty of treasonable designs against Union war efforts. Yet, while still in the field, his solution to the Copperhead problem was a soldier's rather than a politician's. "I think the Union papers and speakers are making too much noise and parade about...Copperheads," he had then confided to his wife."It would be better to say less and do more." If more loud-talking Union men were fighting before Atlanta and

Richmond, he wrote, "the Copperheads would be dead and no one would know who killed them." Back in Indianapolis, however, he found that political strategists had more devious plans. Treason charges make excellent political fireworks, and it was at this point that the arrest of Lambdin P. Milligan was effected.

Particular care was taken in the apprehension of Milligan on October 5, 1864. A special "train had been backed from Indianapolis at night to the tracks beside his home to prevent any interference, because Milligan was a popular figure in Huntington." The arrest was made without incident, and fifteen days later Milligan was placed on trial at Indianapolis before a military commission. Together with other leaders of the Sons of Liberty, he was charged specifically with 1) conspiracy against the Government of the United States, 2) affording aid and comfort to the rebels against the authority of the United States, 3) inciting insurrection, 4) disloyal practices, and 5) violations of the laws of war.

While Milligan pleaded not guilty, his attorney, John R. Coffroth, advanced the special argument that the military commission had no jurisdiction to try and sentence his client. Milligan, he argued, was not a resident of one of the rebellious states, nor a prisoner of war, nor a soldier, but a citizen of Indiana, arrested at his home by a military power. On this crucial point of jurisdiction, the Judge Advocate maintained the military's right to hold court, for President Lincoln had suspended civil law in trials for conspiracy and treason, and General Hovey was acting as representative of the commander in chief of the Army of the United States. Counsel for Milligan was overruled, and the celebrated trial got under way. It was still in progress when Lincoln was re-elected, and after Harrison, himself re-elected to the Reportership, had left Indianapolis to rejoin his command.

The trial, lasting until the early part of December, 1864, attracted wide public attention. Interest and surprise reached a peak when several of the accused, including one of the "major generals," turned state's evidence. These men, long-time associates of

Milligan, gave damaging testimony against him. In his defense, Milligan's attorney could only angrily assail the government's star witness as the "mudsill of infamy, who turned informer to purchase his own release." After a brief consultation, the military commission found the accused guilty of the charges preferred against them. Milligan was sentenced to be hanged on May 19, 1865, between the hours of twelve and three on the parade grounds between Camp Morton and Burnside Barracks, near Indianapolis. In the meantime, the convicted man was to be confined in the military prison at Columbus, Ohio.

Milligan's many friends exerted every effort to secure a Presidential pardon. Lincoln showed himself inclined to release Milligan, but any official action was precluded by his assassination. Andrew Johnson, on the contrary, approved the findings of the military commission and ordered that the hangings take place without further delay. Confederate prisoners, then at Camp Morton, were detailed to erect the gallows. At this point Milligan himself gave up all hope and notified his family to prepare for the worst. He made his funeral arrangements, even to the selection of pallbearers. Neither Mrs. Milligan nor Attorney Coffroth, however, shared his despair. His wife hastened to Washington and gained an interview with Secretary of War Stanton, with whom her husband had read law. Stanton promised that he would seek a commutation of sentence from President Johnson. Simultaneously, a group of Republicans led by Governor Morton pleaded for a stay of execution. On May 18, 1865, Attorney Coffroth filed a petition for a writ of habeas corpus, a move which postponed Milligan's execution until June 2, 1865. On that very day, President Johnson finally commuted Milligan's sentence to life imprisonment at hard labor in the Columbus penitentiary.

In the meantime, the wheels of justice continued their slow grind. The judges of the Indiana Circuit Court failed to agree on the habeas corpus writ, and the question was certified to the Supreme Court of the United States. Thus the stage was set for a landmark decision in constitutional law. After elaborate argu-

ment and consideration, the Court held that General Hovey's military commission had no jurisdiction to try and sentence Milligan. The Court firmly stated that "the constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances." On April 2, 1866 Milligan's discharge from prison was ordered and executed. Cannons roared their welcome to the released resident of Huntington, whom eighteen months of imprisonment had brought to the point of physical prostration. Within a month, the Federal Grand Jury at Indianapolis indicted Milligan on the same charges on which he had been tried by the military commission. He was released on bail. When the case was not pressed, Lambdin P. Milligan was dismissed and many believed the episode was closed.

Two years elapsed before Milligan, restored to health, made his own move in court. In the spring of 1868, he brought suit against the members of the military commission for damages. Among the twenty-two named were General Alvin P. Hovey, Joseph Holt, Judge Advocate General of the United States Army, and former Governor Oliver P. Morton. While there was never any question of Milligan's technical right of recovery, the suit stirred deep emotions.

When Milligan opened his case in the Common Pleas Court of Huntington County, he employed former Senator Thomas A. Hendricks as counsel. This added fuel to the fire, for Hendricks was not only the leading Democrat in Indiana but had also sympathized with Milligan and his objectives during the war. When, in May, 1871, the proceedings were transferred to the United States Circuit Court for the District of Indiana, President Grant appointed General Harrison counsel for the defense. This move had a distinct political and military tinge. A soldier-President was appointing a soldier-lawyer to defend soldier-administrators and executives. At the outset, therefore, the smoldering fires of civil war hatred were rekindled. After all, people said, Harrison was defending personal friends, many of whom, like General Hovey, had been comrades

in arms and in politics. Also, many Republicans believed that the plaintiff and his counsel still labored under the stigma of treason during wartime. For Harrison himself, the case was fairly bursting with potential political and legal capital.

On the first day, and throughout the long trial, the courtroom was jammed with spectators. There was an enormous display of popular feeling against Milligan, although even the uninitiated knew that the law was on his side. Once the Supreme Court had spoken, Milligan's claim, amounting to $100,000 in damages for false arrest and subsequent injury, rested on sure legal ground. This right of recovery Harrison recognized, and his legal sense bade him concentrate on mitigation of the damages. Harrison's real objective, however, was to get into the court record the entire story of alleged treason, as perpetrated by Milligan and sundry other Knights of the Golden Circle. If he could convince the jury that the conduct of the plaintiff and his associates was "treasonable," and if he could paint the picture "in a glaring light" and with "an overwhelming accumulation of evidence," his twofold objective would be accomplished: mitigation of damages and castigation of Democrats.

After two weeks spent in examination of witnesses, Harrison was ready to go before the jury. The crowded courtroom was astounded by the thunder of his opening salvo. "Gentlemen of the jury," he began, "the case you have been called to try is a legacy of war. It has brought back to our minds with vividness the vicissitudes and anxieties of that protracted struggle for national life." Harrison pitched his appeal to the jury on the broad plane of patriotism and devotion to duty. More than once the General hammered home the point that Hovey and his codefendants, amid war, conspiracy, and subversion, had kept unsullied their character as public officers. "They were United States soldiers," Harrison proclaimed, "who had heard the cry of national distress, and with brave, true hearts, had forsaken all and dared all, that they might preserve us as a nation." This indirect attack on both Hendricks and Milligan, neither of whom had

seen military service, was not lost on the jury.

Then, in carefully chosen phrases, Harrison paraded before the jury the maimed survivors of the national struggle. To them the country owed a debt beyond calculation, for it was by "the blessing of God upon their valor" that the supremacy of the Constitution and civil law had been restored. Milligan, Harrison pointed out, was now assailing these very men "under the shield of that constitution and those laws, in a court whose continued existence is due to them and their associates in arms." Was it fair, demanded the General, that a man "who compassed the destruction of that charter of liberty and personal right," should now draw his weapons of attack from the Constitution itself?

As a piece of oratory and special pleading, Harrison's summation was masterful. Without a note in hand, he recited for the jury the history of the Sons of Liberty. He whispered their passwords, demonstrated their special grips, and revealed the stringent obligations of secrecy under which the group operated. The Sons, Harrison declared, were a military organization on Hoosier soil with "a full complement of officers...and a fair supply of arms and ammunition." In that hour of crisis, Hovey and his men "had imprisoned conspirators shown to be engaged in activities dangerous to the Nation's safety." Shall the law enervate the men who risked their limbs that the law itself might have life? Could General Hovey have acted otherwise? Could the military tribunal, appointed by Hovey to try Milligan, "have refused to perform that duty? The command was an imperative one, and a refusal to obey would be as grave an offense and as conspicuous a disregard of military duty as a refusal to march at the trumpet call." Here Harrison eyed each juror. "What is the duty of a soldier?" he demanded. And answered for them:

> His not to reason why,
> His not to make reply,
> His but to do or die.

It was very late on the afternoon of May 29, 1871, when Harrison launched his final appeal. He restated for the jury the defense's contention that General Hovey and his aides had acted for the public welfare in perfectly good faith. In a series of rhetorical questions he asked who could impugn the good character of the military tribunal that had tried and convicted Lambdin P. Milligan. In particular he cited the valor of defendant General Ben Spooner (now a federal marshal), who, thundered Harrison, had been "maimed for life" in the Atlanta campaign.

Yonder, on the bloody sides of Kenesaw, he gave an arm, almost a life, for the country which he, and these his comrades, loved so well. While he lay upon the field, bleeding, almost dying, here in Grand Council in the State of Indiana Milligan and his associates were plotting treason; and now they seek to rob him of the little savings from the office which a grateful country, and a President who honors his valor, have conferred upon him, in order to enrich the traitors.

Gentlemen, I feel sure that it will not be so. On the morrow when the booming gun shall salute the rising sun, and . . . maidens come to hang floral offerings upon the head-stones of our dead, may your returning fleet vindicate the living.

Judge Drummond immediately charged the jury in a way that satisfied Harrison. The twelve took the case at six o'clock that Memorial Day eve, and at eleven the following morning they rendered a verdict which, though in favor of Milligan, was a paper victory. The plaintiff's claim for damages was reduced from $100,000 to a nominal sum of five dollars.

For Harrison, the verdict ranked with his victory in the Clem case. From it he was to draw legal, personal, and political prestige. Although the Republican state convention was still nine months away, friends began anew to acclaim him as Indiana's next governor. Hoosiers the state over now knew him as a good general, a relentless prosecutor, and a skillful defense

attorney. His reputation soon crossed state lines, and political preferment appeared clearly on Harrison's horizon.

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